IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 2786 OF 1986

M/s. Tungabhadra Industries Ltd. & anr. ... Plaintiffs

V/s

M/s. Shree Balaji Carriers ... Defendants

Mrs. Sneha Dwivedi i/by P.N. Sadarangani for the plaintiffs.

None for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 30TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed this suit for recovery of the amount of Rs.1,22,122/- from the defendants alongwith interest on the said amount at the rate of 18% p.a. from the date of the suit till actual payment or realization. Plaintiff No.1 is a Limited Company where as plaintiff No.2 is the Insurance Company who had covered the consignment which was sent through carriers i.e. defendants. The consignment was made over to the defendants on 25.9.1983 for carriage and safe delivery at the destination and was accepted by the defendants for the purpose of consideration under Invoice No. 1568 dated 20.9.1983 of M/s. State Trading Corpn. Ltd.,

Bombay. The consignment was short-delivered and defendants issued shortage certificate dated 14.11.1983. The survey of the suit consignment was conducted accordingly and Survey Report dated 31.10.1983 was issued. Plaintiff No.1, by letter dated 15.19.1983 lodged the claim with the defendants as required under the provisions of the Carriers Act for Rs.1,22,122/- which was the amount of loss suffered by the plaintiff No.1. Plaintiff No.2 had covered the goods under Insurance Policy and the amount was paid to the plaintiff No.1 for which purpose letter of subrogation was issued to the plaintiff No.2 and, therefore, the suit is filed by the plaintiffs for decree of the suit.

2. The defendants have filed their written statement raising various contentions and sought for dismissal of the suit.

3. In view of the pleadings of both parties, certain issues arose. The settled issues and my findings thereon are as under :-

(1) Whether the plaintiffs prove that Sec.10 notice has been served on the defendants ?

(2) Whether the plaitiffs prove that this Hon’ble Court has jurisdiction to try and decide this suit ?

(3) Whether the plaintiffs prove that the suit consignment has been entrusted to the defendants for carriage from Bombay to Kurnool?

(4) Whether the defendants prove that they have taken proper care of the consignment and delivered the consignment in sound condition at the destination ?

(5) Whether the suit is filed within the period of limitation ?

(6) Whether the plaintiffs prove that they are entitled to claim interest on the sum of Rs.1,22,122/- from defendants ?

(7) Whether the plaintiffs are entitled to any decree against defendants ?

(8) What relief ?

My findings on the issues are :-

Issue No.1 :- Affirmative.
Issue No.2 :- Affirmative.
Issue No.3 :- Affirmative.
Issue No.4 :- Negative.
Issue No.5 :- Affirmative.
Issue No.6 :- Affirmative.
Issue No.7 :- Affirmative.
Issue No.8 :- As per final order below.

4. It may be noted that the defendants have filed their written statement after appearance but failed to remain present for hearing of the suit and therefore the suit proceeded ex-parte against defendants. The defendants have not filed any evidence on record. On the other hand, officer of the plaintiff No.2 has entered the witness box and proved his affidavit of evidence as well as the original documents by way of compilation including consignment, shortage certificate, survey report, plaintiffs letter dated 15.10.1983 to the defendants, letter of subrogation dated 24th December, 1983 and discharge voucher. The entire evidence of the plaintiffs has gone on record unchallenged and, therefore, I have no

hesitation to hold that the plaintiffs have proved their claim. Hence the following order :-

O R D E R

The suit stands decreed with costs.

Defendants shall pay an amount of Rs.1,22,122/- to the plaintiff No.2 alongwith interest at the rate of 12% p.a. on the aforesaid amount from the date of the suit till actual payment or realization.

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